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## MASSACHUSETTS PUBLIC RECORDS LAW APPEAL

October 21, 2013

**HAND DELIVERED on 10/21/13 [NOTE: The hard copy of this Appeal was hand-delivered to SOS in a three-ring binder labelled " PRL Appeal, FELDMAN," on October 21, 2013,-received 3:55 pm by Angela]**

**VIA EMAIL 10/22/13** *this email is sent in addition to the hard copy so the large document can be portable and the online links can be more accessible.*

Supervisor of Public Records  
Office of the State Secretary  
One Ashburton Place, Room 1719  
Boston, Massachusetts 02108

RE: Somerville City Hall Emails, Mar - June 2012. (PIR 7/23/13)<sup>1</sup> MR6344

Dear Supervisor of Public Records:

This is the emailed appeal document, made pursuant to 950 CMR 32.08(2) regarding the City of Somerville's noncompliance and denial of access to records and portions of records requested on 7/23/13. The City's final response was sent on 9/24/13. This appeal is submitted within 90 days of original request.

- I request the Supervisor's determination on whether the nondisclosed portions of records and associated withheld documents are public records.
- I request the Supervisor's opinion on whether the fee charged prior to production of records was in accordance with 950 CMR 32.03, 950 CMR 32.06(1)(c), and whether each of the itemized charges was reasonable or excessive.
- If the Supervisor requires custodial indexing of records, I request that a copy of said index also be furnished to me during the investigation phase. If the Supervisor orders an *in camera* inspection, I request that a copy of inspection index(es), and any additional lists describing supplementary data ordered by the Supervisor, be sent to me during the investigation phase.

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<sup>1</sup> Entire correspondence, including original Request and City's "completed" (9/10/13) and final (9/24/13) responses is online at: <https://www.muckrock.com/foi/somerville-8/somerville-city-hall-emails-mar-june-2012-pir-72313-6344/>

Due to the lengthy correspondence that preceded the final response (Exhibit A, The Request), plus, the large number of records that are disputed -44 out of the 50 requested- this is a lengthy document.

The Arguments section has three parts: first: a discussion of four noncompliance issues that permeate the Response; second: presentation of the 32 disputed records that are redacted and withheld based solely on the Attorney-Client Privilege; third: 11 records that are redacted and withheld based on a combination of Exemptions/Privileges (one record, #12 provides an analysis that applies to 7 records in that section); the remaining disputed record in that third section is redacted with only one Exemption claimed.

The City's full Response is included as Exhibit B.

Exhibit C contains copies of a number of news articles that were the basis for requesting these records.

To the best of my knowledge, none of the records in my original Request were, or currently are, the subject of any active litigation, administrative hearings or mediation. These records are not requested for any commercial purposes, or to harass any persons or agencies. The information sought is of clear and compelling public interest, involving only the operations or activities of the government, and specifically sheds light on the agency's performance of its statutory duties.

Many of these records contain embarrassing clues regarding misconduct by high-ranking city officials, performed during regular work hours, as they collaborated to enact certain activities that do not appear to have been driven by public service values; or, dictated by respect for human dignity, fairness, and social equity.

Nevertheless, that is not a lawful reason to withhold these records.

Please do not hesitate to contact me for any reason. I look forward to your response.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Eileen Feldman". The signature is written in dark ink on a white background.

Eileen Feldman

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**Exhibit A** shows the entire REQUEST and entire correspondence, 7/23- 9/29/13, which is also online.<sup>2</sup>

**Exhibit B shows** the entire RESPONSE, which is also online.<sup>3</sup>

**Exhibit C** News stories included in Appeal footnotes plus others that show continued interest in the issues discussed with requested Records.

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<sup>2</sup> See fn 1

<sup>3</sup> "Completed Response" Document Archive at: <https://www.muckrock.com/foi/somerville-8/somerville-city-hall-emails-mar-june-2012-pir-72313-6344/>

Custodian's 9/10/13 Cover letter at:

[https://muckrock.s3.amazonaws.com/foia\\_files/SKMBT\\_42313091703290.pdf](https://muckrock.s3.amazonaws.com/foia_files/SKMBT_42313091703290.pdf)

Final Response Privilege/Exemption Log at:

[https://muckrock.s3.amazonaws.com/foia\\_files/Privilege-Exemption\\_Log\\_-\\_9-23-13.pdf](https://muckrock.s3.amazonaws.com/foia_files/Privilege-Exemption_Log_-_9-23-13.pdf)

## THE REQUEST

### **1. The Request and Entire Correspondence, 7/23/13 - 9/29/13, Summarized**

The entire correspondence, including the initial request of 7/23/13, the city's "completed response," sent on 9/11/13, the city's last response sent on 9/24/13, and my acknowledgement of this final response on 9/29/13, is online via MuckRock.com<sup>4</sup> and attached as Exhibit A.

#### Summary of Correspondence. NONCOMPLIANCE ISSUES Noted

- 7/23/13: Original Request for copies of 50 city emails included an attached spreadsheet<sup>5</sup> listing 6 fields of email transmission data, plus a column indicating desired attachments, for each email. The request was made in written form and sent through MuckRock.com<sup>6</sup>.
- 8/6/13: Custodian acknowledges Request and provides a fee estimate of \$59.14.
- 8/7/13: Payment in full hand delivered.
- 8/8/13: Custodian acknowledges payment and demands reconfirmation of Request.

In this response, **Custodian states two confusing, possibly misleading, portrayals of the law:**

1. Regarding "without unreasonable delay," he states:

"Please be advised that the Massachusetts Public Records Law does not set a time period for which the records must be provided..." -

This advisement seems to qualify the meaning of the regulations: "Every governmental entity shall maintain procedures that will allow at reasonable times and without unreasonable delay access to public records in its custody to all persons requesting public records. Each custodian shall comply with a request as soon as practicable and within ten days." 950 C.M.R. 32.05 (2)

2. Regarding my explicit request for accessible electronic format, he states:

*"The Public Records Law requires electronic records be produced, as feasible, in a digital form, but permits the City to ensure the integrity of the record and any applied redactions"*

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<sup>4</sup> July 23, 2013 Original request. <https://www.muckrock.com/foi/somerville-8/somerville-city-hall-emails-mar-june-2012-pir-72313-6344/>

<sup>5</sup> Attached spreadsheet "**Somerville City Hall Emails, Mar - June 2012. (PIR 7-23-13).ods**" at: <https://www.muckrock.com/foi/somerville-8/somerville-city-hall-emails-mar-june-2012-pir-72313-6344/>

<sup>6</sup> MuckRock.com is a public-view FOIA online requester and management tool. see <https://www.muckrock.com/about/>

This information seems to qualify my rights to request accessible electronic records, and seems to contradict Electronic Records Management Guidelines, Section 11: Accessibility to Public Information for Persons with Disabilities."<sup>7</sup>

Regardless of this confusion, I proceed by reconfirming my original request.

- 9/11/13: Custodian mails a "Completed response" which denies access to 10<sup>8</sup> attachments, the majority of email bodies and many associated email threads, and a 2-page Cover Letter which listed possible exemptions and privileges that might apply to any or all of the redacted and withheld records, and portions of records. Document Archive at: <https://www.muckrock.com/foi/somerville-8/somerville-city-hall-emails-mar-june-2012-pir-72313-6344/>  
Cover letter at: [https://muckrock.s3.amazonaws.com/foia\\_files/SKMBT\\_42313091703290.pdf](https://muckrock.s3.amazonaws.com/foia_files/SKMBT_42313091703290.pdf)

**NONCOMPLIANCE ISSUES** in Completed Response<sup>9</sup> lead me to appeal this Response pursuant to 950 CMR 32.08 (1)

**Denial by Custodian.** Where a custodian's response to a record request made pursuant to 950 CMR 32.05(3) is that any record or portion of it is not public, the custodian, within ten days of the request for access, shall in writing set forth the reasons for such denial. The denial shall specifically include the exemption or exemptions in the definition of public records upon which the denial is based... Failure to make a written response within ten days to any request for access shall be deemed a denial of the request. The custodian shall advise the person denied access of his or her remedies under 950 CMR 32.00 and M.G.L. c. 66, § 10(b).

- 9/19/13: I appeal these denials through MuckRock's "FollowUp" tool. This statement of dissatisfaction with the heavily redacted "Completed response specifically requests full access to the records, reminds Custodian that non-segregable portions of records must be provided; and requests that his final response must provide specific exemptions and explanations for all denied portions of records and withheld attachments.
- 9/24/13: Custodian responds by appending a "Privilege/Exemption Log 9/23/13" <sup>10</sup> onto an edited form of my original request spreadsheet. 9/25/13.

#### **NONCOMPLIANCE ISSUE:**

In Custodian's 9/24/13 final response, he has maintained denial of my appeal for full access to

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<sup>7</sup> [http://www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf)

<sup>8</sup> in HARD COPY I made a typo and said "12 attachments instead of "10 attachments." Please accept this correction.

<sup>9</sup> These noncompliance issues are covered in **ARGUMENTS I. Four Noncompliance Issues**

<sup>10</sup> [https://muckrock.s3.amazonaws.com/foia\\_files/Privilege-Exemption\\_Log\\_-\\_9-23-13.pdf](https://muckrock.s3.amazonaws.com/foia_files/Privilege-Exemption_Log_-_9-23-13.pdf)

records yet he has not provided any advisement of my remedies per 950 CMR 32.00 and G.L. 66 § 10(b).

"The custodian shall advise the person denied access of his or her remedies under 950 CMR 32.00 and M.G.L. c. 66, § 10(b)." 950 CMR 32.05(3)

- 9/29/13: Since Custodian created ambiguity by not identifying this as a final response, and further muddled the picture by stating that I could request records I thought were missing by supplying further email metadata, I emailed an acknowledgement, naming the 9/24/13 response as a "Final response."

Custodian neither contradicted this detail nor responded further.

**2. This Request Is Made Solely To Shed Light On This Local Government's Performance Of its Statutory Duties and Disclosure Of These Records Will Fulfill A Core Purpose of the Massachusetts Public Records Law**

These emails provide a view into the operations and activities of the government during work hours and some weekend hours between March 15, 2012 and May, 31, 2012. Most emails involve 5+ city officials.

These documents shed light on local government's performance of its statutory duties specifically related to: facility and programmatic accessibility, disability civil rights, first amendment protections, and related matters of Public Safety and Open Meeting Law.

The majority of requested records were identified within a city-generated spreadsheet<sup>11</sup> in response to then-Co-Chair Barry Rafkind's 5/23/12 PIR<sup>12</sup>; request for a search for 17 words and phrases related to the government's performance, activities and conduct regarding statutory human rights obligations and compliance with Open Meeting Law.

In December, 2012, the many news stories, Letters to the Editor, blogs and other published writings on the matters associated with these requested records were consolidated, in part, by the local paper as one of Somerville's top ten stories of 2012<sup>13</sup>.

Please see exhibit C for copies of some key local news articles, op-Eds and PR related to these matters, beginning in March 2012 and up to August 2013.

Due to the continued public interest in these stories, the outcome of this appeal is being followed by at least one regional reporter.

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<sup>11</sup> @SomervilleCity Response to Brafrkind 5/23/12 PIR at:

<https://docs.google.com/file/d/0Bx9GO1XciP0fYmVGNEhVaUU2OTg/edit?usp=sharing>

<sup>12</sup> BRafkind Public Info Request 5:23:12 to @SomervilleCity.pdf at:

<https://docs.google.com/file/d/0Bx9GO1XciP0fLVB2TDdJdndEY1k/edit?usp=sharing>

<sup>13</sup> This story's section is titled "**Arts and angst at the Armory**" pp. 2-3, published 12/27/12. See

<http://www.wickedlocal.com/somerville/news/x1233662626/Somervilles-top-10-stories-of-2012>

## ARGUMENTS

"Every record that is made or received by a government entity or employee is presumed to be a public record unless a specific statutory exemption permits or requires it to be withheld in whole or in part." A Guide to the Massachusetts Public Records Law (updated 1/13), p. 1

The exemptions are strictly and narrowly construed. Attorney General v. Assistant Commissioner of the Real Property Department of Boston, 380 Mass. 623, 625 (1980); A Guide to Massachusetts PRL (updated 1/13), p. 9.

### I. Four Noncompliance Issues

Custodian's Cover Letter (9/10/13) listed 5 exemptions and 1 privilege that may apply, in any combination, and without specificity.

The Cover letter says, "The basis for withholding or redacting the requested records arises from one or more of the following exemptions in Massachusetts public records law. G.L. c. 4, s. 7(26) and then lists 5 exemptions and one privilege, citing the operational statutes- with certain meaningful omissions in 2 cases<sup>14</sup>. "The response must also include a *specific* exemption to the Public Records Law to justify the denial of access to any record." A Guide to the Massachusetts Public Records Law (updated 1/13), p. 2; "The statutory exemptions are narrowly construed and not blanket in nature." A Guide to the Massachusetts Public Records Law (updated 1/13), p.13

1. My subsequent appeal, for specific explanations of those denials was denied.

I wrote a letter of dissatisfaction with the "completed response"-reminding Custodian of the need to provide *specific* explanations and including where such exemptions and privileges applied. (9/19/13, Exhibit A)

Custodian merely appended a "Privilege/Exemptions Log 9/23/13" column onto the records spreadsheet (9/24/13, Exhibit A; Privilege/Exemptions Log 9/23/13, Exhibit B), with no explanations to assist Requester in understanding the basis for the heavily redacted Response. "A denial must detail the specific basis for withholding the requested materials." 950 CMR 32.08(1); " The denial

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<sup>14</sup> However, even in the Cover Letter's general explanations, Custodian omits meaningful language in 2 descriptions: 1. For Attorney-Client privilege, he omits the key clause, when "*undertaken for the purpose of obtaining legal advice or assistance*" even though his case law cite (Suffolk Constr. Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 449-50 (2007)) otherwise exactly matches that privilege explanation provided in A Guide to the Massachusetts Public Records Law (updated January 2013) <sup>14</sup>p. 28

2. For Exemption (d), he states, "Exemption (d) provides an executive privilege..." rather than, "Exemption (d) provides a *limited* executive privilege..." A Guide to the Massachusetts Public Records Law (updated 1/13), p. 14.

must include a citation to one of the statutory exemptions upon which the records custodian relies, *and* must explain why the exemption applies." 950 CMR 32.08(1)

## **2. My subsequent appeal for release of non-exempt portions of the records was denied.**

In my letter of dissatisfaction with the "completed response" (9/19/13, Exhibit A) I reminded Custodian of the need to provide non-segregated portions of the records, and appealed for access to those portions within 10 days.

Custodian tacitly denied this appeal, leaving 43 of the 44<sup>15</sup> disputed record bodies (except for salutations, sign-offs and boilerplate) and associated withheld attachments wholly redacted and withheld. "Where exempt information is intertwined with non-exempt information, the non-exempt portions are subject to disclosure once the exempt portions are deleted. 32 G. L. c. 66, § 10(a); *Reinstein v. Police Commissioner of Boston*, 378 Mass. 281, 289-90(1979) (the statutory exemptions are not blanket in nature).

## **3. Custodian's final response log applies *more than one* exemption/privilege to 11 of the 44 denied records, rather than providing a specific exemption and explanation for redacted words, lines, paragraphs or pages.**

As in the Cover letter, Custodian gives the impression that *any* of the redacted portions in those 11 records can be explained on the basis of *one or more* of the stated exemptions. "Every government record in Massachusetts is presumed to be public unless it may be withheld under a *specifically stated exemption*." Secretary W.F. Galvin, introduction, *A Guide to the Massachusetts Public Records Law* (updated 1/13)

## **4. The Final Response arrived after an unreasonable delay.**

My request was received on 7/23/13 and I received the Completed Response on 9/11/13 and a Final response on 9/24/13. The records custodian must respond to requests as soon as practicable, without unreasonable delay and within ten calendar days. G. L. c. 66, § 10(a-b); 950 CMR 32.05(2)

When my response finally appeared, it turned out that **I was not provided *copies of original records pulled from the files*; but rather, was merely provided copies of copies of records that had previously been redacted in 2012, and compiled into one .pdf, for another individual's request.**<sup>16</sup>

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<sup>15</sup> One disputed record is provided with meaningful non-segregable portions; however, the information contained within the segregated portion appears legitimately disclosable as well (Record #46)

<sup>16</sup> If one opens MuckRock's "Document Archives" to download the Custodian's 4 .pdfs that were compiled in Response to my 2013 Request at <https://www.muckrock.com/foi/somerville-8/somerville-city-hall->



The Custodian's fee estimate provided no clue that I should expect to only be provided *copies of already-redacted records*. He charged me for "Search (locate and compile selected e-mails) of Computerized Records" time. "Search time" means the time used to locate a requested record, pull it from the files, copy it and return it to the files." 950 CMR 32.03

**The Custodian took 55 days from the day following receipt of Request to extract, compile and place in the mail 50 records pulled from that one .pdf document.**

### **Lesser Access?**

I can find no presumption in the statute that allows for such *previously redacted records* to be subsequently treated as public records- except for the very narrow application in Exemption (n), which is not applicable to these Records.

"Under the Public Records Law, every requester is treated equally; therefore, even a person who is the subject of the record is not granted any greater access right than any other person." (A Guide to the Massachusetts Public Records Law, p. 4) I assume that the converse is equally true- that no requester is granted any *less access right* than any other person.

My Response proved to be copies of *copies of already-redacted records* rather than copies of the original documents, pulled from the files. This 2013 Request did not involve any ongoing complaint investigations. To the best of my knowledge, none of the requested records involve ongoing litigation, mediation processes, ongoing policy deliberations, or incomplete reports.

These records contain embarrassing clues regarding misconduct by high-ranking city officials, performed during regular work hours, as they collaborated to enact certain activities that were neither driven by public service values, nor dictated by respect for human dignity, fairness, and social equity.

Nevertheless, that is not a lawful reason to withhold these records.

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[emails-mar-june-2012-pir-72313-6344/](#), it is seen that the sidebar pagination does not correspond to sequential pages. For example, the file "E-Mails Redacted 1.pdf" which is 27 pages, begins with "page 296" and ends with "page 37." Thus, I was able to compare my response, and the pagination revealed in the sidebar, with a prior-redacted compilation of 2111 pages, sent, on September 14, **2012**, by the same City Custodian, in response to an individual's request for 760 records. That individual kindly provided me direct access to his 2011 page .pdf Response for comparison, and the records correspond exactly.

## **II. Refuting Thirty-Four Records Redacted and Withheld Solely on the Basis of Attorney-client Privilege**

**Custodian fails to provide enough information for requester to make an informed decision on whether or not these communications can be interpreted as privileged.**

### **City Provides Only Brief and Incomplete Explanation, Omitting Key Clause**

Custodian's Cover Letter States,

*"Records constituting confidential communications between public officials and the city's law department have been withheld or redacted pursuant to the attorney-client privilege. Suffolk Constr. Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 449-50 (2007)."*

Custodian has used the exact same citation as is found in A Guide to the Massachusetts Public Records Law (updated January 2013) <sup>17</sup>p. 28; however, he has omitted the key clause: that such communications

*"must be undertaken for the purpose of obtaining legal advice or assistance. " Suffolk Constr. Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 449-50 (2007*

Thus, he provides Requester with the impression that merely having a lawyer participate in the discussion(s) is enough to cloak the communication with solicitor-client privilege.

### **Custodian Fails to Meet Four Burdens of Proof:**

1. Proving the Existence Of The Privilege, 2. That Communication Involves Provision of Legal Advice, 3. That It is Confidential, And 4. That There Was No Waiver Of Confidentiality.

*"Furthermore, for the government to invoke the attorney-client privilege, it must do more than simply assert it; the government has the burden of proving the existence of the privilege, and must produce "detailed indices" justifying its claim that the privilege applies to the withheld documents." *Id.*, 449 Mass. at 450 n.9, 460, 870 N.E.2d at 38 n.9, 45-46.*

The attorney-client privilege operates against a backdrop of other provisions designed to promote openness in government. HeinOnline -- 20 Geo. J. Legal Ethics 182 2007

*"The Supervisor's Office issues determinations regarding [the attorney-client] privilege on a case-by-case basis. " A Guide to the Massachusetts Public Records Law (updated January 2013) <sup>18</sup>p. 28.*

The **34 Records** denied solely on the basis of Attorney-Client Privilege are refuted on the following pages, case-by-case.

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<sup>17</sup> <http://www.sec.state.ma.us/pre/prepdf/guide.pdf>

<sup>18</sup> *Id*

1	FW: Fwd: The March 23rd Surgeon General's Press 3/22/2012 Conference			
	Joseph Curtatone	12:23:03 is...INACCESSIBLE	Janice Delory	

**Location of Responsive Record:** E-Mails – Redacted 1.pdf, pp. 1-4.

**Redaction Notes:** 3 threads fully redacted

**Discussion:** Attorney not even included on requested email. Confidentiality of associated threads waived by further forwards.

2	RE: ADA Federal Highway Admin 4/18/2012 meeting 4/25			
	Joseph Curtatone	9:41:56	Frank Wright; Robert King; Stanley Koty; Carlene Campbell; David Shapiro	Janice Delory; Omar Boukili; Hayes Morrison; Daniel Hadley

**Location of Responsive Record:** E-Mails – Redacted 1.pdf, p. 5

**Redaction Notes:** Email body fully redacted. Nonsegregable portions denied. Approx. 19 lines

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** Recipients other than Law Department on To and CC lines. Email serves public relations and compliance purposes. Mayor discusses strategy for an April 25, 2012 meeting between City Officials and FHWA/DOT officials regarding a Federal complaint the Mayor received on April 4, 2012. Shared between 9 persons from 6 different departments.

Requester has verified that this **investigation was fully completed prior to the PRL Request.**<sup>19</sup>

All e-mail created or received by an employee of a government unit is a public record. SPR Bulletin No. 1-99 (Feb. 16, 1999; revised and reissued May 21, 2003).

5	RE: Armory Building, AAB Dockets V09-197 and C10-059			
	Janice Delory	3/21/2012 21:28:08	Frank Wright; David Shapiro; Robert King	Joseph Curtatone; Thomas Champion; Jaclyn Rossetti

**Location of Responsive Record:** E-Mails – Redacted 1.pdf, p. 9-10..

<sup>19</sup> FHWA's 8/19/13 response via email re: **HCR-40 DOT #2012-0140** states, in part: "the investigation was completed several months ago, and we are waiting for our Chief Counsel's Office in our Washington D.C. Headquarters to release the Report of Investigation (ROI)."

**Redaction Notes:** 1st email body plus "Original message" (40 lines) fully redacted, Subject redacted, Signature boilerplate redacted. Nonsegregable portions denied.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** Privilege does not cover discussions regarding factual information such as this communication, reviewing MAAB Decisions.

This email also serves public relations and event planning purposes, nor is this a confidential communication.

This is a record pertaining to the city's awareness of Armory (problematic location referred to in final email thread) ("the Armory"). All issues within that MAAB complaint have been finalized since April 11, 2012.

(brief timeline: Complaint submitted, March 2010. Violations acknowledged and Mayor informed, May 26, 2010. First Decision<sup>20</sup> published on June 8, 2010. Final Decision<sup>21</sup> published on November 15, 2011 (verifying that a Fine was issued starting October 31, 2011 and that the City was prohibited from using this facility until the violations were remedied). Case was completed and closed following a site review and subsequent Decision published April 11, 2012.<sup>22</sup> )

				Frank Wright;	
				Robert King;	
				David Shapiro;	Thomas
				Jaime Corliss;	Champion; Jaclyn
				Cindy Hickey;	Rossetti; Joseph
6	Janice Delory	3/22/2012 9:49:00	RE: Fwd: The March 23rd Surgeon General's Press Conference ...INACCESSIBLE	Nancy Aylward	Curtatone

**Location of Responsive Record:** E-Mails – Redacted 1.pdf, p. 11.

**Redaction Notes:** Record requested is actually the 2nd email shown, and fully redacted, along with 1 other redacted email threads redacted.

**Discussion:** This is not a confidential or privileged email. It serves event-planning purposes.

(note: Since the Response I received was merely a copy of already-redacted copies, certain emails such as this one, were provided without the original transmission data.

Transmission and receipt information is considered an integral part of the record and must be retained in any printed or stored version. SPR Bulletin 1-99 (2003).

<sup>20</sup> <http://www.slideshare.net/eilily/armory-decision-may-24-2010-somerville-ma>

<sup>21</sup> <http://www.slideshare.net/eilily/armory-decision-october-31-2011-somerville-ma>

<sup>22</sup> <http://www.slideshare.net/eilily/aab-armory-decision-april-11-2012>

7	Janice Delory	3/22/2012 10:49:19	RE: Fwd: The	Frank Wright;	
			March 23rd	Robert King;	
			Surgeon General's	David Shapiro;	Thomas
			Press Conference	Jaime Corliss;	Champion; Jaclyn
			...	Cindy Hickey;	Rossetti; Joseph
				Nancy Aylward	Curtatone

**Location of Responsive Record:** E-Mails – Redacted 1 .pdf, pp. 12-15.

**Redaction Notes:** Email fully redacted, plus next email thread.

**Discussion:** This is not a confidential nor privileged email. It serves event planning purposes. City Officials and staff included on this email involve 6 departments.

Record involves review of email sent to State officials regarding a problem with the location for a regional launch of a Federally-granted program, which was MC'd by the Somerville Mayor and hosted then-U.S. Surgeon General Regina Benjamin.

All e-mail created or received by an employee of a government unit is a public record. SPR Bulletin No. 1-99 (Feb. 16, 1999; revised and reissued May 21, 2003).

9	Janice Delory	3/26/2012 12:24:07	RE: Draft Letter	Thomas Champion;	
			to the Editor for	Paulette Renault-	Jaclyn Rossetti;
			Review	caragianes; Joseph	Carlene
				Curtatone; Frank	Campbell; David
				Wright	Shapiro

**Location of Responsive Record:** E-Mails – Redacted 1.pdf, p. 17

**Redaction Notes:** Email body fully redacted, thread fully redacted, sign-off from thread shown.

**Discussion:** This is not a confidential or privileged email. Officials are drafting an Op-Ed.

Draft documents circulated on electronic mail systems are considered to be records.

Electronic Records Management Guidelines, p.7.

[http://www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf)

The final product, an Op-Ed signed by Health Dept. Director, was published in Somerville Journal on 3/27/12, titled Letter: Allegations of inaccessibility at Armory building misleading and later proven to have misled the public on a variety of compliance and civil rights issues.<sup>23</sup>

(A generative email for this Op-Ed activity conducted by city officials during work time, using taxpayer funds, is fully revealed in the "let's pick a fight" email, record #37, located in Exhibit B, E-Mails – Redacted 3.pdf, p. 11.)

<sup>23</sup> <http://www.wickedlocal.com/somerville/news/x221017589/Letter-Allegations-of-inaccessibility-at-Armory-building-misleading>

All e-mail created or received by an employee of a government unit is a public record. SPR Bulletin No. 1-99 (Feb. 16, 1999; revised and reissued May 21, 2003).

		4/6/2012	RE: Beacon Street:	Hayes Morrison; Stanley Koty; Robert
11	Janice Delory	12:37:00	Limits on Beacon Street	King; Michael F. Glavin; Frank Wright

**Location of Responsive Record:** E-Mails – Redacted 1.pdf, pp. 19-20.

**Redaction Notes:** Requested record is the 2nd email in this thread (see discussion, record #6). 1st thread fully redacted (12 lines), as is Requested email body (2 lines). Non-segregable portions denied.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** Email neither confidential nor privileged. This record shows city staff discussions regarding MassDOT Project 607209,<sup>24</sup> which is funded through the 2013 Transportation Improvement Program for the Boston Metropolitan Planning Organization and should not involve any secrecy.

		5/14/2012	FW: Commission membership	
14	Janice Delory	15:51:00	02-_09-_12.xls	Frank Wright

**Location of Responsive Record:** E-Mails – Redacted 1.pdf, p. 26

**Redaction Notes:** Email body fully redacted (7 lines), Subject redacted, Attachment redacted + withheld.

**Discussion:** Email regards compliance issues, relevant to Open Meeting law. This record is of compelling public interest as it regards the much-publicized sudden shutdown of the Human Rights Commission (HRC) hours after this email was generated. This published article: Somerville commission accuses City Hall of retaliation Somerville Journal<sup>25</sup> explores some of the issues that have yet to be explained.

The city's withholding of this record contributes to a public perception that a group of city officials conspired to cover-up wrongdoing related to Open Government, OML obligations and the HRC in the spring of 2012.

<sup>24</sup>[http://www.mhd.state.ma.us/ProjectInfo/Main.asp?ACTION=ViewProject&PROJECT\\_NO=607209](http://www.mhd.state.ma.us/ProjectInfo/Main.asp?ACTION=ViewProject&PROJECT_NO=607209)

<sup>25</sup> <http://www.wickedlocal.com/somerville/x364599400/Somerville-commission-accuses-City-Hall-of-retaliation>

15	Jaclyn Rossetti	3/23/2012 8:44:37	argh!	Thomas Champion; Joseph Curtatone; Janice Delory; Frank Wright; David Shapiro	Paulette Renault-caragianes; Jaime Corliss; Denise Taylor
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**Location of Responsive Record:** E-Mails – Redacted 1.pdf, p. 27.

**Redaction Notes:** Email body fully redacted (8 lines). Non-segregable portions denied.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** Email neither confidential nor privileged, nor seeking legal advice. The withheld “Argh” emails, shared between 5-9 different city officials over the course of 3 weeks are most likely withheld because they reveal embarrassing conduct in the form of disparaging comments made by city officials against a citizen known to be active on the disability rights front.

17	Frank Wright	3/21/2012 21:23:31	Armory Building, AAB Dockets V09-197 and C10-059	David Shapiro; Robert King
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**Location of Responsive Record:** E-Mails – Redacted 2.pdf, pp. 5-6.

**Redaction Notes:** Email body fully redacted (35 lines). There may be as many as 3 email threads redacted here in addition to first email. Non-segregable portions denied- even the boilerplate is redacted.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** Privilege does not cover discussions regarding factual information such as this communication, reviewing MAAB Decisions.

This email also serves public relations and event planning purposes, nor is this a confidential communication.

This is a record pertaining to the city's awareness of Armory (problematic location referred to in final email thread) (“the Armory”). All issues within that MAAB complaint have been finalized since April 11, 2012.

(Brief timeline: Complaint submitted, March 2010. Violations acknowledged and Mayor informed, May 26, 2010. First Decision<sup>26</sup> published on June 8, 2010. Final Decision<sup>27</sup> published on November 15, 2011 (verifying that a Fine was issued starting October 31, 2011 and that the City

<sup>26</sup> see fn 19

<sup>27</sup> see fn 20



was prohibited from using this facility until the violations were remedied). Case was completed and closed following a site review and subsequent Decision published April 11, 2012.<sup>28</sup> )

				Joseph Curtatone; David Shapiro; Robert King; Thomas Champion; Jaclyn Rossetti
RE: Armory Building, AAB Dockets V09-197 and C10-059				
18	Frank Wright	3/21/2012 21:41:21	Janice Delory	

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, pp. 7 - 9.

**Redaction Notes:** Email body fully redacted (approx. 44 lines). There may be as many as 3 email threads redacted here in addition to first email. Nonsegregable portions denied- even the boilerplate is redacted. 3rd page is an unexplained entirely blank page.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** Privilege does not cover discussions regarding factual information such as this communication, reviewing MAAB Decisions.

This email is communicated for public relations and event planning purposes related to an upcoming regional event. This is also a record providing further information about these official's awareness of Armory issues (problematic location referred to in final email thread) (“the Armory”). All issues within that MAAB complaint have been finalized since April 11, 2012.

(brief timeline: Complaint submitted, March 2010. Violations acknowledged and Mayor informed, May 26, 2010. First Decision<sup>29</sup> published on June 8, 2010. Final Decision<sup>30</sup> published on November 15, 2011 (verifying that a Fine was issued starting October 31, 2011 and that the City was prohibited from using this facility until the violations were remedied). Case was completed and closed following a site review and subsequent Decision published April 11, 2012.<sup>31</sup> )

				Thomas Champion; Janice Delory; Paulette Renault-caragianes; Jaime Corliss; David Shapiro
RE: argh!				
19	Frank Wright	3/23/2012 9:37:36	Jaclyn Rossetti	

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, pp. 10-11.

**Redaction Notes:** Email body fully redacted (approx. 30 lines). There may be other email threads also redacted here. Nonsegregable portions denied. Even boilerplate redacted.

<sup>28</sup> see fn 21

<sup>29</sup> see fn 19

<sup>30</sup> see fn 20

<sup>31</sup> see fn 21



If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** The withheld “Argh” records in this request are not confidential, not privileged, and not undertaken for the purpose of obtaining legal counsel or advice. In this record, the solicitor is one of many cc'd on the communication between Communications Director and City spokesperson. Most likely, this email, shared between 7 city officials representing 4 city departments, is withheld because it reveals embarrassing conduct by these City officials, who engaged in activities designed to impugn a local disability activist and her colleagues and to engage the community in downplaying the necessity of adhering to architectural access code.

				Paulette Renault-caragianes; Joseph Curtatone; Janice Delory; Jaclyn Rossetti; Carlene Campbell; David Shapiro
		RE: Draft Letter to the Editor for Review	Thomas Champion	
20	Frank Wright	3/26/2012 12:38:22		

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, p. 12

**Redaction Notes:** Email body fully redacted (19 lines). Nonsegregable portions denied. Even boilerplate redacted.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** This is not a confidential nor privileged email. Officials are drafting an Op-Ed.

Draft documents circulated on electronic mail systems are considered to be records.

Electronic Records Management Guidelines, p.7.

[http://www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf)

The final product, an Op-Ed signed by Health Dept. Director, was published in Somerville Journal on 3/27/12, titled Letter: Allegations of inaccessibility at Armory building misleading and later proven to have misled the public on a variety of compliance and civil rights issues.<sup>32</sup>

(A generative email for this Op-Ed activity conducted by city officials during work time, using taxpayer funds, is fully revealed in the “let's pick a fight” email, record #37, located in Exhibit B, E-Mails – Redacted 3.pdf, p. 11.)

All e-mail created or received by an employee of a government unit is a public record. SPR Bulletin No. 1-99 (Feb. 16, 1999; revised and reissued May 21, 2003).

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<sup>32</sup> see fn 22

					Paulette Renault-caragianes; Janice Delory; Joseph Curtatone; Jaclyn Rossetti; Carlene Campbell; David Shapiro
					RE: Changes to
					3/26/2012 Draft letter to
21	Frank Wright	15:33:36	the Editor	Thomas Champion	

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, p. 13

**Redaction Notes:** Email body fully redacted, next thread? fully redacted. (Approx. 17 lines, total) Att. Redacted and withheld. Nonsegregable portions denied- even signature boilerplate redacted.

**Discussion:** This is not a confidential or privileged email. Officials are drafting an Op-Ed.

Draft documents circulated on electronic mail systems are considered to be records.

Electronic Records Management Guidelines, p.7.

[http://www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf)

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(A generative email for this Op-Ed activity conducted by city officials during work time, using taxpayer funds, is fully revealed in the "let's pick a fight" email, record #37, located in Exhibit B, E-Mails – Redacted 3.pdf, p. 11.)

All e-mail created or received by an employee of a government unit is a public record. SPR Bulletin No. 1-99 (Feb. 16, 1999; revised and reissued May 21, 2003).

					David Shapiro; Janice Delory; Jaclyn Rossetti; Carlene Campbell
					3/27/2012 RE: final Thomas Champion; Paulette
22	Frank Wright	8:44:23	version?	Renault-caragianes	

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, p. 14.

**Redaction Notes:** Email fully redacted (2 lines), next email thread fully redacted (8 lines) Name of Attachment NOT Redacted, but still withheld. Signature Boilerplate provided.

**Discussion:** This is not a confidential or privileged email. Officials are drafting an Op-Ed.

Draft documents circulated on electronic mail systems are considered to be records.

Electronic Records Management Guidelines, p.7.

[http://www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf)

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<sup>33</sup> see fn 22

The final product, an Op-Ed signed by Health Dept. Director, was published in Somerville Journal on 3/27/12, titled Letter: Allegations of inaccessibility at Armory building misleading and later proven to have misled the public on a variety of compliance and civil rights issues.<sup>34</sup> (A generative email for this Op-Ed activity conducted by city officials during work time, using taxpayer funds, is fully revealed in the "let's pick a fight" email, record #37, located in Exhibit B, E-Mails – Redacted 3.pdf, p. 11.)

All e-mail created or received by an employee of a government unit is a public record. SPR Bulletin No. 1-99 (Feb. 16, 1999; revised and reissued May 21, 2003).

23	Frank Wright	4/18/2012 15:42:27	AAB.1) meeting w/Tom Hopkins, 2) raised sidewalk panels	Joseph Curtatone; Janice Delory; Robert King; Stanley Koty; David Shapiro	Carlene Campbell; Omar Boukili; Hayes Morrison; Daniel Hadley

**Location of Responsive Record:** E-Mails – Redacted 2 .pdf, pp. 15-16.

**Redaction Notes:** Email body fully redacted (16 lines) with signature boilerplate showing. next email thread fully redacted (11 lines). Subject redacted on both. Nonsegregable portions denied.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** Email neither confidential nor privileged. Email regards information and guidance regarding State and Federal architectural access and pedestrian rights of ways. Records showing meetings with State officials to receive guidance on pedestrian transportation planning should be disclosed, when requested. If there is mention of an FHWA complaint, that investigation was completed by Summer, 2013 (see Record #2 and fn).

24	David Shapiro	3/20/2012 14:25:10	RE: Extension of the 2012 remdiation list	Carlene Campbell; Robert King; David Giangrande	Stanley Koty; Thomas Champion; David Shapiro; Frank Wright

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, p. 16.

**Redaction Notes:** Email body fully redacted (1 lines), email thread fully redacted (11 lines). Subject redacted. Att. redacted and withheld. Nonsegregable portions withheld.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

<sup>34</sup> see fn 22

**Discussion:** Email neither confidential nor privileged. Any confidentiality privilege waived due 2 issues:

1. outside contractor, David Giangrande, included on record.
2. This is a draft for a submission to the MAAB following the issuance of a Decision and Order for Remediation Plan after a February 2012 MAAB Hearing. MAAB submissions (with the exception of private home and email addresses) are matters of public record and are disclosed upon request. The AAB records in this request are related to city performance of state government's public accommodations law, plus regulatory and building code (521 CMR) obligations.

25	David Shapiro	3/22/2012 10:50:42	RE: Fwd: The March 23rd Surgeon General's Press ...INACCESSIBLE	Janice Delory; Frank Wright; Robert King; Jaime Corliss; Cindy Hickey; Nancy Aylward	Thomas Champion; Jaclyn Rossetti; Joseph Curtatone

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, pp. 18 -21.

**Redaction Notes:** Email body withheld, next 2 email threads also withheld (4 lines, total).

**Discussion:** This is not a confidential or privileged email. It serves event planning and public relations/public information purposes. 10 City officials plus staff discussing issues within email sent to State officials and forwarded to Mayor regarding a problem with the location for a regional launch of a Federally-granted program, hosting then-US Surgeon General Benjamin. City Officials and staff included on this email involve 6 or 7 departments.

26	David Shapiro	3/26/2012 13:53:37	ArmoryAccessibility LtrtoEdv1	Thomas Champion	Frank Wright

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, p. 22

**Redaction Notes:** email body fully withheld (4 lines); Subject redacted, Att. redacted + withheld

**Discussion:** This is not a confidential or privileged email. Officials are drafting an Op-Ed.  
Draft documents circulated on electronic mail systems are considered to be records.  
Electronic Records Management Guidelines, p.7.  
[http://www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf)

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proven to have misled the public on a variety of compliance and civil rights issues.<sup>35</sup>  
(A generative email for this Op-Ed activity conducted by city officials during work time, using taxpayer funds, is fully revealed in the "let's pick a fight" email, record #37, located in Exhibit B, E-Mails – Redacted 3.pdf, p. 11.)

All e-mail created or received by an employee of a government unit is a public record. SPR Bulletin No. 1-99 (Feb. 16, 1999; revised and reissued May 21, 2003).

27	David Shapiro	4/10/2012 12:29:07	Amory Status	Thomas Champion; Denise Taylor	Janice Delory; Paulette Renault-caragianes; Jaclyn Rossetti; Frank Wright; Omar Boukili; Carlene Campbell; Robert King
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**Location of Responsive Record:** E-Mails – Redacted 2 .pdf, pp. 23-24.

**Redaction Notes:** email fully redacted (4 lines) except salutation and sign-off.

**Discussion:** This record does not involve privileged, confidential communications, nor is the Communications Director seeking counsel. The Subject regards a private facility- not a city-owned facility- that was the subject of a news article the day prior to this Record. The article being discussed in this Record is: State: Somerville Armory finally ADA compliant by newspaper reporter Audi Guha, in the Somerville Journal, 4/6/2012, printed the previous day<sup>36</sup>, This 4/9/12 article proves that information that was published in the Op-Ed signed by Health Dept. Director Renault-caragianes, on 3/27/12, Letter: Allegations of inaccessibility at Armory building misleading had misled the public on a variety of architectural accessibility issues related to the facility called the "Armory."

Most likely, Solicitor Shapiro is explaining, to the best of his abilities, why City officials misunderstood the accessibility issues related to the Armory at the end of March 2012.

28	David Shapiro	5/14/2012 10:52:54	AAB decision - Curb Cut at Summer Street and Central Street	Paul Nonni; Edward Nuzzo; Terence Smith	Omar Boukili; Janice Delory; Frank Wright; Robert King; David Giangrande; Carlene Campbell; Matthew Dias
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**Location of Responsive Record:** E-Mails – Redacted 2.pdf, p. 25.

**Redaction Notes:** Email body fully redacted (11 lines), except for salutation and sign-off boilerplate. Att. redacted + withheld. Line redaction under boilerplate indicates that other email thread(s) withheld. Non-segregable portions denied.

<sup>35</sup> see fn 22

<sup>36</sup> <http://www.wickedlocal.com/somerville/news/x2020330810/State-Somerville-Armory-finally-ADA-compliant>

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** Email neither confidential nor privileged. Any confidentiality privilege waived due to 2 issues:

1. outside contractor, David Giangrande, included on record.
2. This communication regards a MAAB decision on a streetscape issue. MAAB Decisions and drafts of decisions and AAB files including associated communications on locations where complaints and variances have been filed are matters of public record and are disclosed upon request (with the exception of private home and email addresses which are redacted). The AAB records in this request are related to city performance of state government's public accommodations law, plus regulatory and building code (521 CMR) obligations.

This email and attachment shared with 6 City department officials: ISD, T & P, Constituent services, Engineering Dept., Executive Dept. and Law Dept.

			Commissioner Email RE Feldman FW: HRC Agenda for April Monthly Meeting	Frank Wright
33	Sonja Darai	4/26/2012 18:39:57		

**Location of Responsive Record:** E-Mails – Redacted 3.pdf

**Redaction Notes:** Email body redacted (2 lines); BR's email address redacted.

**Discussion:** Custodian has not proven that this can be a privileged communication whereby this staff member is seeking legal advice or counsel. The unredacted information regards agenda items that were discussed at a Human Rights Meeting 2 weeks prior to the date of this Record; therefore, information and public records related to Agenda discussions should be fully disclosable per request.

Exemption (C) also claimed for this Record. Custodian Fails to Meet the Burden of Explaining How This Record Contains Any information that reveals Medical, Personnel Information, or "Details Of An Intimate Nature."

Certainly, the email address of Mr. Rafkind should be redacted from public information, and if that is the explanation for the Exemption (c) claim, no problem.



37	Thomas Champion	3/23/2012 9:55:40	RE: argh!	Paulette Renault- caragianes	Jaclyn Rossetti; Joseph Curtatone; Janice Delory; Frank Wright; David Shapiro; Jaime Corliss; Denise Taylor
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**Location of Responsive Record:** E-Mails – Redacted 3 .pdf, pp. 11-12

**Redaction Notes:** Important context email thread from City Spokesperson fully redacted (17 lines). Nonsegregable portions withheld-even boilerplate redacted.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** The withheld “Argh” records in this request are not confidential, not privileged, and not undertaken for the purpose of obtaining legal counsel or advice. The withheld email thread is of compelling public interest and will fill in details for a number of news stories published in 2012 (see Exhibit C). Most likely, this email thread is withheld because it reveals 9 City Officials disparaging or planning to disparage the work and character of a known disability rights activist, using public tax dollars during work hours for such activity.

38	Thomas Champion	3/26/2012 11:53:18	Draft Letter to the Editor for Review	Paulette Renault- Caragianes; Joseph Curtatone; Janice Delory; Frank Wright	Jaclyn Rossetti; Carlene Campbell; David Shapiro
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**Location of Responsive Record:** E-Mails – Redacted 3 .pdf, p. 13.

**Redaction Notes:** Email body (1 line) redacted (only signature boilerplate provided); Att. redacted + withheld.

**Discussion:** This is not a confidential or privileged email. Officials are drafting an Op-Ed.

Draft documents circulated on electronic mail systems are considered to be records.

Electronic Records Management Guidelines, p.7.

[http://www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf)

The final product, an Op-Ed signed by Health Dept. Director, was published in Somerville Journal on 3/27/12, titled Letter: Allegations of inaccessibility at Armory building misleading and later proven to have misled the public on a variety of compliance and civil rights issues.<sup>37</sup> (A generative email for this Op-Ed activity conducted by city officials during work time, using taxpayer funds, is fully revealed in the “let’s pick a fight” email, record #37, located in Exhibit B, E-Mails – Redacted 3.pdf, p. 11.)

<sup>37</sup> see fn 22

All e-mail created or received by an employee of a government unit is a public record. SPR Bulletin No. 1-99 (Feb. 16, 1999; revised and reissued May 21, 2003).

39	Thomas Champion	3/26/2012 15:12:25	Changes to Draft letter to the Editor	Paulette Renault-caragianes; Janice Delory; Frank Wright; David Shapiro; Joseph Curtatone	Jaclyn Rossetti; Carlene Campbell
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**Location of Responsive Record:** E-Mails – Redacted 3.pdf, p. 14.

**Redaction Notes:** Email body redacted (2 lines) (only signature boilerplate provided); Att. redacted + withheld.

**Discussion:** This is not a confidential or privileged email. Officials are drafting an Op-Ed.  
 Draft documents circulated on electronic mail systems are considered to be records.  
 Electronic Records Management Guidelines, p.7.  
[http://www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf)

The final product, an Op-Ed signed by Health Dept. Director, was published in Somerville Journal on 3/27/12, titled Letter: Allegations of inaccessibility at Armory building misleading and later proven to have misled the public on a variety of compliance and civil rights issues.<sup>38</sup>  
 (A generative email for this Op-Ed activity conducted by city officials during work time, using taxpayer funds, is fully revealed in the "let's pick a fight" email, record #37, located in Exhibit B, E-Mails – Redacted 3.pdf, p. 11.)

All e-mail created or received by an employee of a government unit is a public record. SPR Bulletin No. 1-99 (Feb. 16, 1999; revised and reissued May 21, 2003).

40	Thomas Champion	3/26/2012 17:34:00	final version?	Paulette Renault-caragianes; Frank Wright; David Shapiro	Janice Delory; Jaclyn Rossetti; Carlene Campbell
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**Location of Responsive Record:** E-Mails – Redacted 3 .pdf, p. 15.

**Redaction Notes:** Email body fully redacted (3 lines); (only signature boilerplate provided).  
 Subject redacted. Att. redacted + withheld.

**Discussion:** This is not a confidential nor privileged email. Officials are drafting an Op-Ed.  
 Draft documents circulated on electronic mail systems are considered to be records.  
 Electronic Records Management Guidelines, p.7.  
[http://www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf)

<sup>38</sup> see fn 22



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All e-mail created or received by an employee of a government unit is a public record. SPR Bulletin No. 1-99 (Feb. 16, 1999; revised and reissued May 21, 2003).Electronic\_Records\_Guidelines.pdf, p.7.

				Paulette Renault-caragianes; Frank Wright	David Shapiro; Janice Delory; Jaclyn Rossetti; Carlene Campbell
41	Thomas Champion	3/27/2012 9:23:04	RE: final version?		

**Location of Responsive Record:** E-Mails – Redacted 3.pdf, pp. 16-17.

**Redaction Notes:** Email and 2 threads fully redacted (total, 5 lines). Attachment provided.

**Discussion:** This is not a confidential or privileged email. Officials are drafting an Op-Ed.  
Draft documents circulated on electronic mail systems are considered to be records.  
Electronic Records Management Guidelines, p.7.  
[http://www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf)

The final product, an Op-Ed signed by Health Dept. Director, was published in Somerville Journal on 3/27/12, titled Letter: Allegations of inaccessibility at Armory building misleading and later proven to have misled the public on a variety of compliance and civil rights issues.<sup>40</sup>  
(A generative email for this Op-Ed activity conducted by city officials during work time, using taxpayer funds, is fully revealed in the "let's pick a fight" email, record #37, located in Exhibit B, E-Mails – Redacted 3.pdf, p. 11.)

All e-mail created or received by an employee of a government unit is a public record. SPR Bulletin No. 1-99 (Feb. 16, 1999; revised and reissued May 21, 2003).

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<sup>39</sup> see fn 22

<sup>40</sup> see fn 22

43	Thomas Champion	4/3/2012 18:17:42	RE: argh!	Paulette Renault- caragianes; Denise Taylor; Janice Delory	Jaclyn Rossetti; Joseph Curtatone; Frank Wright; David Shapiro; Jaime Corliss
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**Location of Responsive Record:** E-Mails – Redacted 3.pdf, 20-22.

**Redaction Notes:** Final email thread fully redacted (25 lines). Non-segregable portions denied.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** The withheld “Argh” records are not confidential, not privileged, and not undertaken for the purpose of obtaining legal counsel or advice. The withheld email thread is of compelling public interest and will fill in details for a number of news stories published in 2012 (see Exhibit C).

Most likely, this email thread is withheld because it reveals 9 City Officials disparaging the work and character of 2 local Human rights defenders, one the Co-Chair of the Human Rights Commission (Barry Rafkind); and the other the former Chair of the Disabilities Commission (Eileen Feldman).

44	Thomas Champion	4/7/2012 8:31:45	Barry Rafkind Finds a New Soapbox	Janice Delory; Paulette Renault- caragianes; Sonja Darai; Omar Boukili; Frank Wright; David Shapiro	Carlene Campbell; Robert King
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**Location of Responsive Record:** E-Mails – Redacted 3.pdf, p. 23

**Redaction Notes:** Email body fully redacted (13 lines). Non-segregable portions withheld.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:** This withheld record is not confidential, not privileged, and not undertaken for the purpose of obtaining legal counsel or advice. On a Saturday morning, 9 city officials are reacting to then-Co-Chair of the Human Rights Commission, Barry Rafkind's writings as a private citizen, including his recent Letter: Somerville’s Armory actions have ‘chilling effect’ by Barry Rafkind, letter-to-the-editor posted 4/6/2012, printed the previous day <sup>41</sup>

<sup>41</sup> <http://www.wickedlocal.com/somerville/news/opinions/x2020331017/Letter-Somerville-s-Armory-actions-have-chilling-effect#axzz1tflKwyk0>

Officials may also be reacting to the news article State: Somerville Armory finally ADA compliant by newspaper reporter Auditi Guha, in the Somerville Journal, 4/6/2012, printed the previous day <sup>42</sup> which refuted their Op-Ed<sup>43</sup> published on 3/27/12.

46	Thomas Champion	4/12/12 7:28 00 PM	FW: FYI, Rafkind comment to ResiStat	Frank Wright; David Shapiro; Omar Boukili; Paulette Renault-caragianes
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**Location of Responsive Record:** E-Mails – Redacted 3.pdf, pp. 28-29.

**Redaction Notes:** This Email includes non-segregated portions; however, the 19 lines that are redacted are here appealed.

**Discussion:** This record is not confidential, privileged, or seeking legal counsel or advice. These matters were publicly discussed in several 2012 news articles and citizen blogs. The City's Communications Director, Tom Champion, appears to be laying out points that City Officials can use to defend themselves against the facts presented in the news article State: Somerville Armory finally ADA compliant by newspaper reporter Auditi Guha, Somerville Journal, 4/6/2012- which refuted statements these officials had published in a recent 3/27/12 Op-Ed (see fn 7). In addition, it is possible he is also laying out points to refute Barry Rafkind's Letter: Somerville's Armory actions have 'chilling effect' by Barry Rafkind, letter-to-the-editor posted 4/6/2012.

Furthermore, any confidentiality was waived by the writer of this email, due to his public comments in his Op-Ed, published in the Somerville Journal on June 14, 2012.<sup>44</sup>

48	Thomas Champion	5/9/2012 14:00:04	RE: Barry Question FW: May 14 HRC Meeting	Paulette Renault-Caragianes	Frank Wright; David Shapiro; Sonja Darai; Omar Boukili; Jaclyn Rossetti
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**Location of Responsive Record:** E-Mails – Redacted 4.pdf, p. 1

**Redaction Notes:** Non-segregated portion of Email body provided; however, 8 redacted lines are appealed; Non-segregable portions denied. Boilerplate at bottom indicates that final email thread from one of the solicitors.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

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<sup>42</sup> see fn 35

<sup>43</sup> see fn 22

<sup>44</sup> <http://www.wickedlocal.com/somerville/news/x1106455295/Guest-Column-Personal-attacks-on-Somerville-mayor-unethical-and-irresponsible#ixzz2iIKQaCmI>

**Discussion:** In this record, the lawyers are merely cc'd along with other officials and staff from 3 city departments. The record shows discussions involving government performance and conduct related to OML issues (Agenda setting and possibly quorum issues) in addition to civil rights and First Amendment issues. Furthermore, the Communications Director appears to be counseling the lawyers, not the other way around!

		FW: HRC		Joseph Curtatone; Janice	
Thomas		5/15/2012		Delory; Omar Boukili; Jaclyn	
50	Champion	12:59:30	Journal	Frank Wright	Rossetti

**Location of Responsive Record:** E-Mails – Redacted 4.pdf, pp. 3-4.

**Redaction Notes:** Email body fully redacted, possibly email threads also (approximately 53 lines). Boilerplate at bottom indicates that at least one email thread is withheld.

**Discussion:** This is not a confidential privileged record; it is a draft in response to questions from the editor of the Somerville Journal.

Draft documents circulated on electronic mail systems are considered to be records.

Electronic Records Management Guidelines, p.7.

[http://www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf)

The Communications Director is not asking for legal counsel; but merely providing an opportunity for input, if those shared on this email have any concerns.

Furthermore, confidentiality was waived, because information in this draft was further disclosed and widely disseminated in print, online, and forwarded by the State News Feed.

See: [Somerville commission accuses City Hall of retaliation](#) - by editor Dan Atkinson, published May 17, 2012, Somerville Journal <sup>45</sup> and Guest [Column: Personal attacks on Somerville mayor unethical and irresponsible](#) - by Communications Director Tom Champion, published June 14, 2012, Somerville Journal. <sup>46</sup>

<sup>45</sup> <http://www.wickedlocal.com/somerville/x364599400/Somerville-commission-accuses-City-Hall-of-retaliation>

<sup>46</sup> <http://www.wickedlocal.com/somerville/news/x1106455295/Guest-Column-Personal-attacks-on-Somerville-mayor-unethical-and-irresponsible#ixzz2iIKQaCmI>

### III. Twelve Records Refuted on the Basis of Exemptions and Combinations of Exemptions/Privileges

Eleven of the twelve refuted records below were redacted on the basis of a *combination of exemptions*, and nine of these combined 3 Exemptions- **Exemption (b) - Internal Personnel Rules and Practices**<sup>47</sup>, **Exemption (c) - Privacy Exemption**<sup>48</sup>, and **Exemption (d) - Policy Development**<sup>49</sup>. Two records were also redacted with Exemption(s) combination with **Attorney-Client Privilege**. The remaining record was redacted on the basis of only one Exemption

Custodian provides no explanation for *where* each of the exemptions applies within the redacted Records; nor *why* these exemptions apply, either in combination, or alone. Any non-exempt portions are also denied (please see **ARGUMENTS, I. Four Noncompliance Issues**).

In this section, there are ten records with "Commission" in the subject header. These are public records that pertain to the activities and management of the local Human Rights Commission ("HRC").

Disclosure of these "Commission" records will fulfill a core purpose of the Massachusetts Public Records Law (PRL), as they shed light on how city officials performed functions and conducted themselves in matters related to Open Meeting Law (OML) and Public Body Agenda-setting; membership/appointment management; and how the City oversees Quorum and other OML obligations.

Furthermore, certain of these records may specifically reveal disparities regarding how city officials screened and discuss the suitability of applicants from diverse economic and social classes who had applied for, or were recommended to be appointed as, Human Rights Commission (HRC), and possibly other public body members. Record #45 in particular proves that internal discussions and information about volunteers (relevant to city-managed public bodies) can migrate far and wide without any apparent observance of confidentiality protections.

In summary, these are public information records, subject to disclosure upon request, and involving matters of legitimate public interest. None of these records requested in 2013 can be said to include information covered by executive privilege with regards to predecisional or ongoing policy deliberations; none of these requested records relate solely to the internal personnel practices of the City, and no personnel files, medical files, or criminal records have been requested in whole or in part.

The City's heavy redactions of these records contributes to a public perception that appointments to, and management of, the City of Somerville's Commissions Boards and Authorities, and including their formal decision-making operations, are plagued by patronage, corruption and possible violations of ethical, civil rights and also Open Meeting Law standards.

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<sup>47</sup> Exemption (b) is claimed for ten Records: #s 12, 13, 16, 30, 31, 32, 34, 45, and 47.

<sup>48</sup> Exemption (c) is claimed for eleven Records: #s 3, 12, 13, 16, 29, 30, 32, 34, 46 and 47

<sup>49</sup> Exemption (d) is claimed for 8 records: #s 12, 13, 16, 30, 31, 32, 34, and 45.

3	Joseph Curtatone	4/30/2012 16:20:15	Baseball guide	Omar Boukili
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**Exemptions Claimed: Exemption (c) - Privacy Exemption; Attachment Withheld pursuant to Exemption (c)**

Location of Responsive Record: E-Mails – Redacted 1.pdf, p. 6

Redaction Notes: Fully redacted, except for email transmission data. Attachment redacted and withheld.

Discussion: I assume Custodian is referring to the second clause of Exemption (c) to claim this as the sole basis for withholding this record and associated attachment.

Exemption (c) 2nd clause is limited to "intimate details of a highly personal nature, which "include marital status, paternity, substance abuse, government assistance, family disputes and reputation" Attorney General v. Assistant Commissioner of the Real Property Department of Boston, 380 Mass. 623,, 626 n.2 (1980). Whether this Exemption applies must be balanced against "whether the public interest in disclosure outweighs the privacy interest associated with disclosure" Collector of Lynn, 377 Mass. at 156; A Guide to the Massachusetts Public Records Law, p.13.

Certainly a baseball guide would not be of public interest. However, this record was selected due to the fact that it was responsive to a search of 3 official's email records, between 3/1/12 - 6/12/12, for 17 words and phrases<sup>50</sup> related to the city's performance of human rights obligations and compliance with Open Meeting Law.

Therefore, the Custodian needs to either explain how this record could be responsive to that word/phrase search which are important matters of public interest; or, in the absence of any explanation, release the records.

4	Janice Delory	3/21/2012 21:25:52	RE: Armory Building, AAB Dockets V09-197 and C10-059	Frank Wright; David Shapiro; Robert King	Joseph Curtatone; Thomas Champion; Jaclyn Rossetti
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**Exemptions Claimed: Attorney-Client Privilege; Exemption (c) - Privacy Exemption**

Location of Responsive Record: E-Mails – Redacted 1 .pdf, pp. 7-8.

Redaction notes: Fully redacted, except for email transmission data. 2 further email threads fully redacted, final email thread, which was also sent to me in December 2011, revealed

<sup>50</sup> That entire Request is here:

<https://docs.google.com/file/d/0Bx9GO1XciP0fLVB2TDdJdndEY1k/edit?usp=sharing>

**Discussion:**

Attorney-Client privilege: This privilege does not cover review of factual information on completed Administrative Decisions. This email communication is also relevant to event planning and public relations matters.

The final email thread, unredacted except for an architect's email address, shows that these officials were reviewing a December 2011 email from the AAB Director, which was cc'd to me ("Community Access project") in addition to a non-city employee (architect). This record is one of 5 similarly-named records in this response that show the types of considerations brought forward by city officials when reviewing MA Architectural Access Board ("MAAB") Decisions related to a private facility ("the Armory"). This State Architectural Access complaint was finalized on April 11, 2012; therefore, no litigation, administrative or mediation issues are pending at this time.

Exemption (C): If Custodian has used this Exemption pertinent to the first clause, which allows private emails to be redacted ("*data relating to a specifically named individual*") I agree with the basis for this small redaction.

Otherwise, are issues such as marital status, paternity, substance abuse, government assistance, family disputes and reputation are contained in this record? If so, the public interest in disclosure must be balanced against such.

Public interest: This record contributes to further understanding regarding why these public officials subsequently collaborated to publish a widely circulated Op-Ed<sup>51</sup> claiming that the accessibility violations at this facility, circa March, 2012, were "insignificant." The Op-Ed remains relevant in 2013, due to current City PR and ADA activities stating the City's commitment to inclusion and architectural accessibility.<sup>52</sup>

12	Janice Delory	4/10/2012 14:36:25	FW: Commissioners	Joseph Curtatone; Thomas Champion; Jaclyn Rossetti; Omar Boukili
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**Exemptions Claimed: Exemption (b) - Internal Personnel Rules and Practices; Exemption (c) - Privacy Exemption; Exemption (d) - Policy Development**

**Location of Responsive Record:** E-Mails – Redacted 1.pdf, pp. 21-23.

**Redaction Notes:** Fully redacted, all subsequent threads redacted, including subsequent email data. Nonsegregated portions denied.

<sup>51</sup> see fn 22

<sup>52</sup> <http://www.somervillema.gov/news/city-s-accessibility-self-evaluation-available-resident-review>



If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion:**

Exemption (b):

The Custodian has failed to explain what segregated portions of these Records have been withheld on the basis of Exemption (b)-internal personnel practices. No personnel or medical files have been requested; and absent any specific explanation regarding how disclosure would represent a “clear and unwarranted invasion of personal privacy,” these records must be disclosed.

Exemption (c):

if privacy issues for nonstaff explains this basis, those can be redacted and nonsegregable portions provided. However, Custodian has provided no access to nonexempt portions of this record.

Exemption (d):

[Exemption (d)'s] “application is limited to recommendations on legal and policy matters found within an ongoing deliberative process,” *Babets v. Secretary of the Executive Office of Human Services*, 403 Mass. 230, 237 n.8 (1988).; *A Guide to the Massachusetts Public Records Law* p. 14.

“Exemption (d) provides a limited executive privilege for policy development and... is intended to avoid release of materials that could taint the deliberative process if prematurely disclosed.” *A Guide to the Massachusetts Public Records Law* (updated 1/13), p. 14.

Since this record involves recommendations for volunteer HRC membership in 2012, the record as a whole does not appear to qualify for redactions and withholdings on the basis of exemption (d).

Nevertheless, since rules for volunteer membership in most of the City's volunteer Commissions do not stipulate term limits, the City may argue the “ongoing” nature of such membership. Therefore, a closer analysis is required, since the conduct and practices of the city's officials and staff - while internally discussing private citizens who have made application to, or, are already serving as, volunteer members of city-managed public bodies- is certainly a matter of compelling public interest.

At the very least, the public deserves to know whether such opportunities are provided in a manner that ensures impartial, nondiscriminatory and inclusive opportunities for diverse volunteer representation. This need-to-know requires an open attitude about disclosing relevant information.

First, the names, home addresses and private email address of applicants for volunteer membership to public bodies are legitimately protected; and it seems that the Custodian accomplishes this on the basis of Exemption (c). However, such limited information can be selectively redacted without shielding the entire record in secrecy.



Second, The City may say that these matters are ongoing, However, Exemption (d) relies upon strictest confidentiality as a foundation for the privilege.

The following questions may provide some guidance:

- Does the City have any written policies and practices showing that discussions, notes and related records between staff regarding volunteer applicants, and including discussions regarding their suitability for certain volunteer positions, are kept in strictest confidence?
- If so, do such written policies (in themselves, public records) name specific and appropriate staff, who are charged with ensuring that the volunteers' privacy information is filed in a manner that strictly protects their privacy from other staff and officials?
- Is there a written policy and accompanying practices to ensure that staff and officials refrain from sharing such information in any form of communication, both internally and outside city operations?
- If a written policy exists, does it specify that volunteer applicant and membership documents are "not subject to PRL disclosure" or, that certain types of these documents and information falls squarely within a "not subject to PRL disclosure" provision?

Summary: Absent proof that written policy and procedures guarantee that only named staff members are maintaining the confidentiality and necessary limited access to such documents, it must be assumed that these are not protected on the basis of Exemption (d), which " provides a limited executive privilege for policy development" and "is intended to avoid release of materials that could taint the deliberative process if prematurely disclosed."

Instead, non-privacy portions of these records must be released, as they fit the definition of public records.

**"Public Records** means all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the Commonwealth, or of any political subdivision thereof or of any authority established by the General Court to serve a public purpose, unless such materials or data fall within one or more of the exemptions found within M.G.L. c. 4, § 7, clause Twenty-sixth." 950 CMR 32.03.

**Please accept this discussion in full to refute these 7 Records: #s 12, 13, 16, 30, 32, 34, and 45.**

13	Janice Delory	4/25/2012 16:03:42	RE: HRC Commissioners	Paulette Renault- caragianes
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**Exemptions Claimed:** Exemption (b) - Internal Personnel Rules and Practices; Exemption (c) - Privacy Exemption; Exemption (d) - Policy Development

**Location of Responsive Record:** E-Mails – Redacted .pdf, pp. 24-25.

**Redaction Notes:** Email body (and subsequent threads) fully redacted, only boilerplate shown.

**Discussion** under Record #12 applies in full to Record #13.

16	Jaclyn Rossetti	4/10/2012 14:38:00	RE: Commissioners	Janice Delory; Joseph Curtatone; Thomas Champion; Omar Boukili
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**Exemptions Claimed:** Exemption (b) - Internal Personnel Rules and Practices; Exemption (c) - Privacy Exemption; Exemption (d) - Policy Development

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, pp. 1-4

**Redaction Notes:** Email body and all threads fully redacted (approx. 5 lines plus Record #30 forwarded, redacted=approx. 52 lines). Only salutations, sign-off and signature boilerplate showing. Nonsegregable portions denied.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion** under Record #12 applies in full to Record 16.

29	David Shapiro	5/31/2012 14:25:56	FW: Bowling pics	Jillian M Foley'; 'Brian R Doherty'; 'Jason Piques'	Jaclyn Rossetti; Robert Collins; Frank Wright; Matthew Buckley; Jason Grossfield; Paula Gartland; Susan Tkaczuk
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**Exemptions Claimed:** Exemption (c) - Privacy Exemption; Exemption (e)

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, p. 26

**Redaction Notes:** Email body fully redacted.

**Discussion:**

Exemption (c): I assume Custodian is referring to the second clause of Exemption (c) to claim this as the sole basis for withholding this record and associated attachment.

Exemption (c) 2nd clause is limited to “intimate details of a highly personal nature which “include

marital status, paternity, substance abuse, government assistance, family disputes and reputation" Attorney General v. Assistant Commissioner of the Real Property Department of Boston, 380 Mass. 623, 626 n.2 (1980). Whether this Exemption applies must be balanced against "whether the public interest in disclosure outweighs the privacy interest associated with disclosure" Collector of Lynn, 377 Mass. at 156; A Guide to the Massachusetts Public Records Law, p.13.

Certainly "Bowling pics" would not be of public interest. However, this record was selected due to the fact that it was responsive to a search of 3 official's email records, between 3/1/12 - 6/12/12, for 17 words and phrases<sup>53</sup> related to the city's performance of human rights obligations and compliance with Open Meeting Law.

Therefore, the Custodian needs to either explain how this record could be responsive to that word/phrase search which are important matters of public interest; or, in the absence of any explanation, release the records.

Exemption (e):

Exemption (e) "may not be used to withhold any materials that are shared with other employees or are being maintained as part of the files of a governmental unit." G. L. c. 4, § 7(26)(e).

Since this record is shared with 7 employees, plus 3 additional non-staff colleagues, Exemption (e) cannot be a basis for withholding this record.

30	Sonja Darai	4/10/2012 14:05:54	Commissioners	Paulette Renault-caragianes
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**Exemptions Claimed: Exemption (b) - Internal Personnel Rules and Practices; Exemption (c) - Privacy Exemption; Exemption (d) - Policy Development**

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, pp 27 -29 (p. 29 is blank page)

**Redaction Notes:** Email body fully redacted after 1st 3 lines. Most non-exempt portions denied.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are "intertwined." *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, "Fees for Access and Copying of Electronic Records" (June 7, 1996)

**Discussion** under Record #12 applies in full to Record 30.

note: Record #30 shows the Commissions Director providing names and information of

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<sup>53</sup> That entire Request is here:

<https://docs.google.com/file/d/0Bx9GO1XciP0fLVB2TDdJdndEY1k/edit?usp=sharing>

approximately 10 persons being recommended for HRC appointments. While I do not refute that the names and home addresses of volunteers being recommended for public body membership falls squarely within a limited privacy exemption, the public has a right to know what types of background and qualifications would trigger such recommendations from this Commissions Director.

On the same day that Record #30 is emailed to the Health Director (April 10, 2012), Health Director then forwards this Record in full to the Mayor, Executive Staff and the Communications Director and Deputy Communications Director. Communications Director then forwards it, in full, to the Director of Traffic and Parking (Record #45), whose direct association as a decision-maker regarding HRC membership is questionable.

		4/14/2012	Commissions	Paulette Renault-caragianes; Sonja	
31	Sonja Darai	17:21:44	Before/After	Darai	Netra/sonja Darai

**Exemptions Claimed: Exemption (b) - Internal Personnel Rules and Practices; Exemption (d) - Policy Development; Attachment withheld pursuant to same exemptions.**

**Location of Responsive Record:** E-Mails – Redacted 2.pdf, p. 30

**Redaction Notes:** Email body fully redacted, except for sign-off. Attachment redacted + withheld,

**Discussion:**

Exemption (b): The Custodian fails to meet the burden of justifying how disclosure of these Quorum matters can inhibit the proper performance of necessary government functions. "For Exemption (b) to apply in Massachusetts, a records custodian must demonstrate not only that the records relate solely to the internal personnel practices of the government entity, but also that proper performance of necessary government functions will be inhibited by disclosure." A Guide to the Massachusetts Public Records Law (updated 1/13) p. 10.

Exemption C: If the first clause is meant, the Custodian fails to meet the burden of proving that information such as medical files; or personnel information such as "employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information (A Guide to the Massachusetts Public Records Law, p. 12, n.53) is contained within this record. Absent that, merely the names and home and private email addresses of volunteer and staff members of Commissions would not require the entire record to be redacted; but to only redact that limited material and disclose the non-exempt portions.

Exemption (d): The Custodian fails to meet the burden of proving that this record contains information that could taint any deliberative process if prematurely disclosed; nor, that this record contains any information that may be withheld on the basis of ongoing "limited executive privilege for policy development." A Guide to the Massachusetts Public Records Law, p. 14; see also n. 64, 65.

32	Sonja Darai	4/25/2012 16:23:39	FW: Harry Kortikere FW: Human Rights Commission	Paulette Renault- caragianes
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**Exemptions Claimed:** Exemption (b) - Internal Personnel Rules and Practices; Exemption (c) - Privacy Exemption; Exemption (d) - Policy Development

**Location of Responsive Record:** E-Mails – Redacted 2 .pdf, p. 31

**Redaction Notes:** Email body and forward fully redacted, 2 attachments redacted + withheld.

**Discussion** under Record #12 applies in full to Record 32.

note: This email involves application for membership on the HRC by an individual who, on that very date, was a public figure, since he was then campaigning to be State Representative, 27th Middlesex District in the Massachusetts House of Representatives, therefore, I appeal the redaction of his name (but not redactions of any private home/email addresses).

34	Sonja Darai	5/3/2012 13:03:12	RE: New HRC Commissioners	Paulette Renault- caragianes
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**Exemptions Claimed:** Exemption (b) - Internal Personnel Rules and Practices; Exemption (c) - Privacy Exemption; Exemption (d) - Policy Development; Exemption (o) - Address of City Employee

**Location of Responsive Record:** E-Mails – Redacted 3.pdf,

**Redaction Notes:** Email body and next thread fully redacted; home addresses of confirmed new HRC members were redacted but not their names- even though they had not yet been sworn in; names of two other HRC applicants redacted.

**Discussion** under Record #12 applies in full to Record 34.

45	Thomas Champion	4/10/2012 15:40:22	RE: Commissioners	Jaclyn Rossetti; Janice Delory; Joseph Curtatone; Omar Boukili Matthew Dias
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**Exemptions Claimed:** Exemption (b) - Internal Personnel Rules and Practices; Exemption (c) - Privacy Exemption; Exemption (d) - Policy Development

**Location of Responsive Record:** E-Mails – Redacted 3.pdf, pp. 24 - 27.

**Redaction Notes:** Email bodies and threads fully redacted. Only metadata and boilerplate shown. Non-segregable portions denied.

If an exemption permits withholding of part of a requested government document, still the non-exempt part of the document must be produced once the exempt portions are redacted out – even if the exempt and non-exempt portions are “intertwined.” *Id.* at 8; G.L. c. 66, § 10(a); SPR Bulletin No. 4-96, “Fees for Access and Copying of Electronic Records” (June 7, 1996)

**Discussion** under Record #12 applies unconditionally to Record #45.

note: Record #45 in particular calls into question internal practices regarding the confidentiality of records naming private citizens. Please see note for Record #30.

			FW: Barry's Clarification of Issue RE Armory Issue	Frank Wright; Sonja	Carlene Campbell;
47	Thomas Champion	4/27/2012 10:56:58	FW: May 14 HRC Meeting	Darai; Paulette Renault-caragianes	Joseph Curtatone; Omar Boukili

**Exemptions Claimed: Attorney-Client Privilege; Exemption (b) - Internal Personnel Rules and Practices; Exemption (c) - Privacy Exemption**

**Location of Responsive Record:** E-Mails – Redacted 3 .pdf, pp. 30-32.

**Redaction Notes:** Email body redacted (7 lines), except for salutation and sign-off. Threads unredacted. Limited redactions regarding a staff member's private family issue is entirely appropriate.

**Discussion:**

Attorney-Client Privilege: This record is not confidential, privileged, or seeking legal counsel or advice. These matters involve Agenda-setting by then-Human Rights Commission Co-Chair Rafkind for an upcoming monthly Public Meeting; and, sheds light on government's performance and conduct regarding matters related to Open Meeting Law and First Amendment rights. Furthermore, confidentiality is waived by the Communications Director, who shares his opinions on these matters with the Somerville Journal Editor Atkinson following the HRC shut-down, mid-May 2012, stating, "It is not clear what grounds the HRC might have to allege (in the words of the ordinance) "circumstances which appear to the commission to unlawfully discriminate against any of the people of the city..."

Massachusetts OML explicitly prohibits non-disclosure of Agenda item discussions upon request- "...the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed..." G.L. Chapter 30A, §18<sup>54</sup>.

Exemption (b): Custodian fails to demonstrate that the records relate solely to the internal personnel practices of the government entity AND also that proper performance of necessary government functions will be inhibited by disclosure.

"For Exemption (b) to apply in Massachusetts, a records custodian must demonstrate not only that the records relate solely to the internal personnel practices of the government

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<sup>54</sup> G.L. Chapter 30A§18 (meanings related to OML processes) at:  
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30A/Section18>

entity, but also that proper performance of necessary government functions will be inhibited by disclosure." Guide, p. 10

"The addition of the qualifying second clause of Exemption (b) evidences a legislative intent to create an exemption that is narrower in scope than the previously enacted, parallel federal exemption See *Globe Newspaper Company v. Boston Retirement Board*, 388 Mass. 427, 432-33(1983) (where the language of a parallel state statute differs in material respects from a previously enacted federal statute, a rejection or expansion of the legal principles embodied in the federal statute may be inferred)." Guide, p. 10



### **FEE DISPUTED**

On August 6, 2013, The Custodian responded to my 7/23/13 Request, including a Fee Estimate that I was required to pay prior to receiving the records. (Exhibit A, 8/6/13 Communication)

1. Custodian's charge for "Search (locate and compile selected e-mails) of Computerized Records" was **based on the prorated hourly salary of an Asst. City Solicitor.**

When my response finally appeared, it turned out that I was not provided *copies of original records pulled from the files*; but rather, was merely provided copies of *copies of records that had previously been redacted in 2012*, and compiled into one .pdf, for another individual's request.<sup>55</sup>

**Although I do not question the amount of time spent searching, I question whether the Assistant City Solicitor was the "lowest paid employee capable of search... of records"- since this search was merely through one 2111-page .pdf; and no further segregation was performed.**

The Supervisor will presume that the lowest paid employee in an agency is capable of search and segregation of records, and, except where exceptional circumstances are present, it is expected that the lowest hourly rate will be used to calculate search and segregation time. A Guide to the Massachusetts Public Records Law (updated 1/13) p. 8

"Search time" is defined as "the time needed to locate, pull from the files, copy and reshelve or refile a public record. However, it shall not include the time expended to create the original record." 950 CMR 32.03

2. Custodian tacked on an additional charge of \$5.30, explaining, "The e-mail records would be ... provided on a CD-ROM *due to size*."

The Completed Response was mailed on 9/11/13, and included one CD-Rom and a two-page Cover Letter.

**The total data on that CD-ROM was only 280 KB. (The Cover page for Exhibit B shows a snapshot of each file's size)**

**I request the Supervisor's opinion on whether the fee charged prior to production of records was in accordance with 950 CMR 32.03, 950 CMR 32.06(1)(c), and whether each of the itemized charges was reasonable or excessive.**

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<sup>55</sup> If one opens MuckRock's "Document Archives" to download the Custodian's 4 .pdfs that were compiled in Response to my 2013 Request at <https://www.muckrock.com/foi/somerville-8/somerville-city-hall-emails-mar-june-2012-pir-72313-6344/>, it is seen that the sidebar pagination does not correspond to sequential pages. I was able to compare my response, and the pagination revealed in the sidebar, with a prior-redacted compilation of 2111 pages, sent, on September 14, **2012**, by the same City Custodian, in response to an individual's request for 760 records. **The records correspond exactly.**



# EXHIBIT A

entire correspondence, including original Request and City's "completed" (9/10/13) and final (9/24/13) responses is online at: <https://www.muckrock.com/foi/somerville-8/somerville-city-hall-emails-mar-june-2012-pir-72313-6344/>

**[NOTE: The hard copy of this Exhibit was hand-delivered, with the entire " PRL Appeal, FELDMAN," to SOS on October 21, 2013,-received 3:55 pm by Angela]**

*Appeal to the Supervisor.* In the event that a person requesting any record in the custody of a governmental entity is denied access, or in the event that there has not been compliance with any provision of 950 CMR 32.00, the requester may appeal to the Supervisor within ninety (90) days. Such appeal shall be in writing, and shall include a copy of the letter by which the request was made and, if available, a copy of the letter by which the custodian responded. The Supervisor shall accept an appeal only from a person who had made his or her record request in writing. An oral request, while valid as a public record request pursuant to 950 CMR 32.05(3), may not be the basis of an appeal under 950 CMR 32.08.

# EXHIBIT B

## THE RESPONSE

**[NOTE: The hard copy of this Exhibit was hand-delivered, with the entire " PRL Appeal, FELDMAN," to SOS on October 21, 2013,-received 3:55 pm by Angela]**

The appeal must include a copy of your original request  
and any response by the records custodian.

### CONTENTS,



104 pages, total

- Custodian's 9/10/13 Cover letter, 2 pages  
online at: [https://muckrock.s3.amazonaws.com/foia\\_files/SKMBT\\_42313091703290.pdf](https://muckrock.s3.amazonaws.com/foia_files/SKMBT_42313091703290.pdf)
- "Completed Response" 9/11/13 Document Archive, 94 pages, produced on CD-ROM as 4 files, named:

 E-Mails - Redacted 1.pdf	Sep 10, 2013 2:45 PM	74 KB	Portab... (PDF)
 E-Mails - Redacted 2.pdf	Sep 10, 2013 2:45 PM	70 KB	Portab... (PDF)
 E-Mails - Redacted 3.pdf	Sep 10, 2013 2:45 PM	70 KB	Portab... (PDF)
 E-Mails - Redacted 4.pdf	Sep 10, 2013 2:45 PM	16 KB	Portab... (PDF)

online at: <https://www.muckrock.com/foi/somerville-8/somerville-city-hall-emails-mar-june-2012-pir-72313-6344/>

- 2 Attachments, both exactly the same document. 2 pages

 armoryaccessibility... -email 9_.docx	Sep 10, 2013 2:45 PM	25 KB	Office ...ment
 armoryaccessibility...ail 9_23_04-.docx	Sep 10, 2013 2:45 PM	25 KB	Office ...ment

This attachment was sent to the Somerville Journal editor on 3/27/12 and and published as;  
[Letter: Allegations of inaccessibility at Armory building misleading](#) by Paulette Renault-Caragianes, Health Dept Director, Somerville Journal guest commentary, posted 3/27/2012<sup>56</sup>

- Final Response Privilege/Exemption Log, 6 pages

online at: [https://muckrock.s3.amazonaws.com/foia\\_files/Privilege-Exemption\\_Log\\_-\\_9-23-13.pdf](https://muckrock.s3.amazonaws.com/foia_files/Privilege-Exemption_Log_-_9-23-13.pdf)

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<sup>56</sup> Op Ed online at: <http://www.wickedlocal.com/somerville/news/x221017589/Letter-Allegations-of-inaccessibility-at-Armory-building-misleading>

**[NOTE: The hard copy of this Exhibit was hand-delivered, with the entire " PRL Appeal, FELDMAN," to SOS on October 21, 2013,-received 3:55 pm by Angela]  
EXHIBIT C**

**First seven<sup>57</sup> articles are referred to in APPEAL footnotes.**  
followed by related articles, published between March 2012- present

fn 12:

[Somerville's top ten stories of 2012](#)<sup>58</sup> Somerville Journal Editors, December 27, 2012

fn 22:

[Letter: Allegations of inaccessibility at Armory building misleading](#) by Paulette Renault-Caragianes, Health Dept Director, Somerville Journal guest commentary, posted 3/27/2012<sup>59</sup>

fn 24:

[Somerville commission accuses City Hall of retaliation](#) - by editor Dan Atkinson, published May 17, 2012, Somerville Journal<sup>60</sup>

fn 35:

[State: Somerville Armory finally ADA compliant](#) by newspaper reporter Auditi Guha, in the Somerville Journal, 4/6/2012<sup>61</sup>

fn 40:

[Letter: Somerville's Armory actions have 'chilling effect'](#) by Barry Rafkind, letter-to-the-editor published 4/6/2012<sup>62</sup>

fn 43: [Guest Column: Personal attacks on Somerville mayor unethical and irresponsible](#)

By Thomas Champion, published 6/14/12, Somerville Journal<sup>63</sup>

fn 51: [CITY'S ACCESSIBILITY SELF-EVALUATION AVAILABLE FOR RESIDENT REVIEW](#)<sup>64</sup> - City

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<sup>57</sup> in HARD COPY, I made a typo and said "five" instead of "seven." Please accept this correction.

<sup>58</sup> this story's section is titled "**Arts and angst at the Armory**" pp. 2-3, published 12/27/12. see <http://www.wickedlocal.com/somerville/news/x1233662626/Somervilles-top-10-stories-of-2012>

<sup>59</sup> <http://www.wickedlocal.com/somerville/news/x221017589/Letter-Allegations-of-inaccessibility-at-Armory-building-misleading>

<sup>60</sup> <http://www.wickedlocal.com/somerville/x364599400/Somerville-commission-accuses-City-Hall-of-retaliation>

<sup>61</sup> <http://www.wickedlocal.com/somerville/news/x2020330810/State-Somerville-Armory-finally-ADA-compliant>

<sup>62</sup> <http://www.wickedlocal.com/somerville/news/opinions/x2020331017/Letter-Somerville-s-Armory-actions-have-chilling-effect#axzz1tflKwyk0>

<sup>63</sup> <http://www.wickedlocal.com/somerville/news/x1106455295/Guest-Column-Personal-attacks-on-Somerville-mayor-unethical-and-irresponsible>

## EXHIBIT C , cont.

These Records are relevant to continuing reportage, here are some additional articles

[Letter: All about the Somerville's Armory ramp](#) by John Kelly, Outgoing chairman, Boston Disability Commission published 4/6/2012 <sup>65</sup>

[Letter: Character assassination unwarranted in Armory issue](#) by Karen Schneiderman Ph.D., Senior Advocacy Specialist, Boston Center for Independent Living, published 4/13/2012, <sup>66</sup>

[Feds probing Somerville handicap compliance](#) By Michelle Nicholasen, Somerville Journal, Jul 18, 2012, published 07:35 PM<sup>67</sup>

[Column: Finding common ground on accessibility in Somerville](#) **By Joe Curtatone.** Somerville Journal, published Aug 16, 2012<sup>68</sup>

**Part 4: Unwalkable Somerville** By William C. Shelton Somerville News. Published June 7, 2013.<sup>69</sup>

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<sup>64</sup> <http://www.somervillema.gov/news/city-s-accessibility-self-evaluation-available-resident-review#sthash.GCgSf55E.dpuf>

<sup>65</sup> <http://www.wickedlocal.com/somerville/news/opinions/x826304281/Letter-All-about-the-Somerville-s-Armory-ramp#axzz1rPZlh9P0>

<sup>66</sup> <http://www.wickedlocal.com/somerville/news/x1830128447/Letter-Character-assassination-unwarranted-in-Armory-issue#axzz1s8Eproab>

<sup>67</sup>

<sup>68</sup> [http://www.wickedlocal.com/somerville/news/x1843769996/Column-Finding-common-ground-on-accessibility-in-Somerville?zc\\_p=0#axzz2WrLIXJEA](http://www.wickedlocal.com/somerville/news/x1843769996/Column-Finding-common-ground-on-accessibility-in-Somerville?zc_p=0#axzz2WrLIXJEA)

<sup>69</sup> <http://www.thesomervillenews.com/archives/39066>